IN THE HIGH COURT OF UTTARANCHAL
AT NAINTIAL

Criminal Misc. Application No. 254 of 2006

Kamal Giri S/o Sri Ramesh Giri
R/o Mohalla Natha Singh
Jaspur, P.S. Jaspur
District Udham Singh Nagar .....Applicants

Versus

1. State of Uttaranchal through
Chief Secretary
Government of Uttaranchal, Dehradun. ....Respondents

Sri Jagdish Prasad, learned counsel for the petitioner.
Learned A.G.A. for the State.

Hon'ble B.C. Kandpal, J.

This petition under Section 482 Cr. P.C. has been filed by the petitioner –Kamal Giri for quashing the summoning order dated 07.07.2004 passed by Civil Judge (Junior Division)(Judicial Magistrate 1st Class) Kashipur in Criminal Case No. 542 of 2004 State Vs Satish Tyagi & others under Sections 147, 148, 149, 307, 302, 392 I.P.C. Pending in the court of Civil Judge (Junior Division)(Judicial Magistrate 1st Class) Kashipur.

2. Brief facts of the prosecution case are that the First Information Report was lodged against the petitioner on 15.09.1996. The police after investigation the matter submitted the final report against the accused persons (including the present applicant). The complainant was informed by the court against the receipt of final report. The complainant filed a protest petition before the concerned Magistrate against that final report.

3. The Magistrate after having considered the protest petition came to the conclusion that there was a prima-facie

case against the accused and took cognizance in the matter on 07.07.2004. Thus, the petitioner has filed the petition for quashing the aforesaid summoning order.

4. After having considered the arguments advanced by the learned counsel for the parties, I am of the view that there is no abuse of process of court in this case. The averments made in the petition are the disputed question of fact which can be judged and assessed by the trial court where the evidence is yet to be adduced. Any judgment rendered by me would amount to premature judgment especially under the circumstance when the evidence is still to be adduced before the trial judge. I am not supposed to embark upon an enquiry with regard to the credibility of the evidence at this state.

5. I do not find any ground for quashing the summoning order at this stage. Therefore, the petition lacks merit and is liable to be dismissed.

6. Accordingly, the petition under Section 482 Cr. P.C. is dismissed.

10.08.2006 **(B.C. Kandpal, J.)**

ASWAL